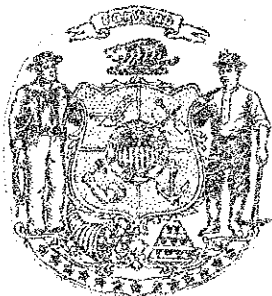


Research Bulletin No. 2

December 1963



WISCONSIN

FILLING LEGISLATIVE VACANCIES:
THE WISCONSIN EXPERIENCE

*Legislative
Reference
Bureau*

FORMERLY: WISCONSIN
LEGISLATIVE REFERENCE
LIBRARY

State Capitol
Madison 2, Wisconsin

53702

FILLING LEGISLATIVE VACANCIES: THE WISCONSIN EXPERIENCE

Table of Contents

	Page
Introduction	1
Pertinent Statutes and Their Application	1
Legislative History in Wisconsin	3
Wisconsin's Experience with Special Elections	4
Other Methods Used to Fill Vacancies	7
Conclusion	9
(1) Special elections	10
(2) and (3) Appointments	11
APPENDIX: State Constitutional Provisions Applying to Legisla- tive Vacancies	12

FILLING LEGISLATIVE VACANCIES: THE WISCONSIN EXPERIENCE*

INTRODUCTION

Wisconsin's Constitution provides, in Section 14 of Article IV, that "the governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature." This provision has remained unchanged since the adoption of the Constitution 115 years ago.

In a simpler age when Legislatures met but a few months every 2 years, this method of filling legislative vacancies proved adequate. Now, with the Legislature meeting in lengthy special and extended regular sessions throughout much of recent legislative biennia, there are those who believe some modification, some modernization, should be made in the process of filling vacancies which arise in Wisconsin's Legislature.

This study will compare the constitutional mandate of this state with those of other states, examine the laws which implement and relate to this subject and study Wisconsin's experience following the occurrence of a legislative vacancy by death or resignation.

PERTINENT STATUTES AND THEIR APPLICATION

The statutory instructions for filling vacancies in Wisconsin legislative offices are contained in Section 7.01 (3) of the Statutes, which provides:

7.01 (3) "Any vacancy in the office of state senator may be filled by election¹ as a vacancy in the office of senator of the United States may be filled, except as otherwise provided by this subsection. Any vacancy in the office of state senator or assemblyman occurring before the first day of February of the first year of his term shall be filled as promptly as may be by special election. But any vacancy in the office of state senator or assemblyman occurring after the close of the last regular session of the legislature held during his term shall not be filled unless a special session of the legislature be thereafter called during such term, in which case a special election to fill such vacancy shall be so ordered, if possible, that the new member may participate in such special session."

Section 17.18 (2) of the statutes, which governs U.S. Senate vacancies and thus by Section 7.01 (3) generally covers State Senate vacancies, reads as follows:

17.18 (2) "Vacancies in the office of United States senator from this state shall be filled by temporary appointment by the governor which appointment shall continue until a successor is elected for the unexpired term. If the vacancy occurs 60 days or more prior to the second Tuesday of July in even-numbered

*Prepared by Michael R. Vaughan, Bill Draftsman.

¹The words "by election" show that the appointing process for U.S. Senate vacancies shall not be used here. There is also a constitutional bar to appointing state legislators.

~~years, such vacancy shall be filled at the primary and general election in such even year. If the vacancy occurs less than 60 days prior to the second Tuesday in July in even years, it shall be filled 2 years hence. The provisions for election for the unexpired term shall not apply if the next general election is one at which the vacant senate seat is to be filled for a full term.~~ The senator so elected shall qualify for office as soon as possible after he receives his certificate of election. This subsection shall apply to any vacancy occurring after June 19, 1957."

Thus the Statutes go into greater detail than the constitutional provision which on first reading seems to impose a blanket requirement on the Governor to call special elections when vacancies occur. According to Section 7.01 (3), a special election shall not be held when the last regular session for a vacated term has ended, unless a special session is called. This, while logical, is an exception not mentioned in the Constitution.

Section 7.01 (3) also affirms a portion of the constitutional requirement by stating that any vacancy occurring before the first February 1 of a legislator's term shall be filled as promptly as may be by special election.

Between the "shall" and the "shall not" exists a gap which Wisconsin's Governors have interpreted to mean "may". In that period between the early and latter parts of a legislative biennium, they have exercised their own discretion in calling or not calling special elections. This discretion is not clearly granted by the Constitution.

Governors have not gone outside the statutory framework to call special elections in recent years, though. Since 1918, no special election has been held to fill an Assembly vacancy after the first April of the vacated term, and for the last 16 years no special election has been called for such purpose to take place after the spring election. This is despite the fact that in recent biennia a greater part of the session occurred after the first April than ever before. In the last 30 years no election to fill a senatorial vacancy has been held other than at the time of the spring election or general election. This rigidity is in keeping with statutory law, but its compliance with the Constitution is not so obvious.

An opinion of the Michigan Attorney General (dated 7-19-50) has dealt with this situation. Michigan's constitutional requirement is almost identical to Wisconsin's, and the Legislature had enacted a statute permitting the Governor to call a special election or wait until the next general election to fill a vacancy. The Attorney General said that the Governor could defer filling the vacancy until the next general election, since the Constitution was silent as to when or how soon the vacancy should be filled. Of course, Wisconsin courts (or Michigan courts, for that matter) might come to a different conclusion than that reached by the Michigan Attorney General.

An administrative procedure, set up by the Wisconsin Statutes and used in regard to certain state senatorial vacancies, appears to further amend the Constitution. Under Sections 5.04 and 6.10 of the Statutes, the Secretary of State notifies the various counties

in even-numbered years to hold September primaries and subsequent general elections and designates the offices to be voted on at those elections. If a Senate seat, not due to be voted on for two more years, stands vacant at that time, the Secretary of State automatically includes that office in his list to the appropriate counties. Apparently this is considered to be a general election (rather than a special election) to fill a vacancy for the unexpired term, and complies with Sections 7.03 and 17.18 (2) establishing the procedure.

Although complying with statutory requirements, this process, whereby the Secretary of State is the initiating officer, seems to fly in the face of the constitutional requirement that the Governor initiate the election process to fill legislative vacancies. However, the present procedure has been followed for many years and has never been challenged.

There is a financial advantage to using the present procedure. Currently, the primary and final election for the vacant seat occur, under the statutory procedure, at the same time as the regular September primary and the November general election. If the Governor called a special election, the special primary would take place at a different time than the regular primary. This would involve additional expense for a specially held primary election, since the statutes presently require a special primary to precede the special election by 4 weeks. Thus, if the special election were held concurrent with the November general election, the special primary would have to be in October. For this reason, the present system has obvious merit.

This point may have been within the scope of the situation covered by the Michigan Attorney General in his opinion discussed earlier, but no reference was made in the opinion to the problem.

LEGISLATIVE HISTORY IN WISCONSIN

Almost no attempts have been made to change Wisconsin's law in this general area, and the statute reads today substantially as it did in 1849.

In 1961, a measure was introduced in the Senate to provide for succession to legislative offices during emergencies resulting from enemy attack. Bill No. 579, S., introduced by request of the state Civil Defense Director, passed the Senate but was nonconcurrent in by the Assembly. It would have required each legislator to name from 3 to 7 "emergency interim successors" in order of preference, who would succeed to the powers and duties of the legislator, but not his office, if the legislator was unavailable because of such an emergency.

The bill was introduced following ratification by the voters of a constitutional amendment which had been adopted by both the 1959 and 1961 Legislatures. The amendment created Section 34 of Article IV of the Constitution which states that the Legislature shall provide for succession to public office during such emergencies.

These measures anticipate an unusual situation and cannot be considered indicative of a legislative desire to change the law as

it applies in normal circumstances. A measure introduced in 1963, however, would have applied more generally. Joint Resolution 16,A., which failed to pass the Assembly, would have amended the Constitution to permit the Governor to fill a vacancy by appointment, the appointee to serve until a successor was elected at a special or general election.

WISCONSIN'S EXPERIENCE WITH SPECIAL ELECTIONS

Special elections have been held 54 times since 1848 to fill vacancies in the state Legislature. (See Table I) This number does not reflect those vacancies occurring which were never filled nor does it include those senatorial vacancies which were filled at the time of a general election, as discussed above. Since many of the unfilled vacancies occurred after the end of a legislative session, it is impossible to accurately state how many such vacancies occurred, but the unfilled vacancies probably outnumber those filled by special election as has been the case in recent sessions.

In the 1959 Session a total of 7 vacancies occurred, 5 of them in the Assembly. All 7 persons leaving office, 4 by resignation and 3 by death, were Democrats. Only 3 of the positions were later filled. In the Assembly 4 of the 5 vacancies remained open and the Democratic plurality was cut almost in half (from 55-45 to 51-45) by the end of the biennium.

In 1961, 6 seats became vacant in the 2 houses, all but one of them held by Democrats. The vacancies occurring in the State Senate in that biennium illustrate the political impact which may result from a number of continuing vacancies. Senators Brennan, Lauri, Moser and Wilkie, all Democrats, resigned prior to the end of the 1961 Session, leaving vacancies which were not filled during that session. No other session has extended over a greater period of time than the 1961 Session and, when the Legislature met for 6 weeks in June and July of 1962, the 4 Democrats had already left office. That session of the Legislature considered the extremely partisan issue of reapportionment, and votes tended to follow party lines to a greater than normal degree.

At the beginning of the 1961 Session the Republican majority in the Senate had been 20 to 13. Thus the Republicans had a comfortable majority, but to obtain a two-thirds majority they had to hold their own members and pick up 2 Democratic votes. This was no longer true in the summer of 1962. With the resignation of 4 Democrats, the alignment became 20 to 9 in favor of the Republicans. Now they held a 70 per cent majority and could carry measures by a two-thirds margin even with 2 Republicans not voting. In a situation involving bloc voting by the parties, the Republicans had gained an incalculable advantage, particularly where a two-thirds majority was necessary, such as to suspend the rules or to override a veto.

So, for several weeks of the 1961 Session and while at least one crucial issue was deliberated, 4 seats stood vacant in the Senate. Certain statistics further emphasize the importance of those vacancies: The Senate was at less than 88 per cent of its full strength; almost one-third of the Democrats elected to the 1961 Senate were no longer eligible to participate; 482,275 persons were no longer represented in the senate.

TABLE I. Special Elections in Wisconsin for State Legislative Offices, 1848-1963⁽¹⁾

District ⁽²⁾	Date of Gov.'s Proclamation	Date of Spe- cial Election	Name of Person Vacating Office	Reason for Vacancy	Name of Successor	End of Unexpired Term
16th Sen.	---	5-20-1853	Joel C. Squires	Res.	James W. Seaton	Jan. 1854
Milwaukee Co., 2nd	---	5-25-1853	Herman Haertel	Res.	Riley N. Messenger	Jan. 1854
Fond du Lac Co., 4th	---	1-13-1859	S. K. Barnes	Dec.	O. Hugo Petters	Jan. 1860
Milwaukee Co., 9th	---	1-26-1860	Andrew Elbe	Dec.	Theodore Hartung	Jan. 1861
Iowa Co., 2nd	---	1- 2-1862	Cyrus Woodman	Res.	John H. Vivian	Jan. 1863
Monroe Co.	---	1-16-1862 ⁽³⁾	Simeon D. Powers	Dec.	Joseph M. Morrow	Jan. 1863
5th Sen.	---	6- 2-1862	Charles Quentin	Dec.	Francis Huebschmann	Jan. 1863
Dodge Co., 1st	---	2-20-1865	James M. McGuire	Dec.	Stoddard Judd	Jan. 1866
5th Sen.	---	3-13-1867	Jackson Hadley	Dec.	Henry L. Palmer	Jan. 1869
23rd Sen.	---	1-21-1879	Charles H. Phillips	Dec.	Joseph B. Bennett	Jan. 1881
Kewaunee Co.	---	1- 4-1881	John M. Read	Res.	Joseph E. Darbellay	Jan. 1882
11th Sen.	---	12- 2-1884	Charles M. Webb	Res.	Merritt C. Ring	Jan. 1886
Dane Co., 1st	---	3-23-1885	William F. Vilas	Res.	Michael J. Cantwell	Jan. 1887
23rd Sen.	---	5-24-1892	Walter S. Greene	Dec.	Albert Solliday	Jan. 1894
Kenosha Co.	---	2-14-1893	Daniel A. Mahoney	Dec.	George H. Kroncke	Jan. 1895
Waushara Co.	---	2-21-1899	William Hughes	Dec.	David Evans, Jr.	Jan. 1901
Milwaukee Co., 5th	---	2-28-1899	Albert Woyciechowski	Dec.	Joseph T. Rechlicz	Jan. 1901
6th Sen.	---	11- 4-1902 ⁽⁵⁾	William H. Devos	Res.	Rip Reukema	Jan. 1905
10th Sen.	10- 9-1906 ⁽⁶⁾	11- 6-1906 ⁽⁵⁾	James A. Frear	Res.	Walter C. Owen	Jan. 1909
14th Sen.	3-18-1912	4-26-1912	J. Elmer Lehr	Res.	Henry M. Culbertson	Jan. 1913
Milwaukee Co., 4th	3-18-1912	4-26-1912	Carl H. Dorner	Dec.	George E. Morton	Jan. 1913
30th Sen.	3-18-1912	4-26-1912	James A. Wright	Dec.	Willard T. Stevens	Jan. 1913
Marinette Co.	1-25-1913	2-25-1913	Albert E. Schwittay	Dec.	James Larson	Jan. 1915
5th Sen.	9-30-1916	11- 7-1916 ⁽⁵⁾	Edw. T. Fairchild	Res.	H. O. Reinholdt	Jan. 1919
Burnett and Washburn	12-11-1916	1- 5-1917	Hans M. Laursen	Dec.	James H. Jensen	Jan. 1919
Barron Co.	2-23-1917	4- 3-1917 ⁽⁴⁾	I. J. Kvam	Dec.	C. A. Beggs	Jan. 1919
Iron and Vilas	12- 6-1917	1-18-1918	E. A. Everett	Res.	Griffith Thomas	Jan. 1919
Marathon Co., 2nd	1- 3-1918	2-12-1918	D. S. Burnett	Res.	Herman A. Marth	Jan. 1919
Winnebago Co., 2nd	1- 3-1918	2-12-1918	William Arnemann	Dec.	Publius V. Lawson	Jan. 1919
Manitowoc Co., 1st	1- 3-1918	2-12-1918	Carl Hansen	Dec.	Walter Wittman	Jan. 1919
11th Sen.	1- 8-1923	2-17-1923	O. G. Kinney	Dec.	Marcus A. Kemp	Jan. 1927
9th Sen.	11-21-1924	12-30-1924	Ben H. Mahon	Dec.	Irving P. Mehigan	Jan. 1927
15th Sen.	3- 9-1933	4-18-1933	George W. Blanchard	Res.	Alexander M. Paul	Jan. 1935
Grant Co., 1st	2-21-1935	4- 2-1935 ⁽⁴⁾	Bert A. Clemens	Dec.	William H. Goldthorpe	Jan. 1937
12th Sen.	2-21-1935	4- 2-1935 ⁽⁴⁾	B. J. Gehrman	Res.	Joseph E. McDermid	Jan. 1937

District(2)	Date of Gov.'s Proclamation	Date of Special Election	Name of Person Vacating Office	Reason for Vacancy	Name of Successor	End of Unexpired Term
27th Sen.	2-21-1935	4- 2-1935(4)	Fred W. Zantow	Dec.	E. Myrwyn Rowlands	Jan. 1939
Rusk and Sawyer Cos.	3-12-1937	4-21-1937	Jorge W. Carow	Dec.	Carl R. Nyman	Jan. 1939
4th Sen.	2-15-1939	4- 4-1939(4)	Oscar H. Morris	Dec.	Milton T. Murray	Jan. 1941
Milwaukee Co., 14th	2-15-1939	4- 4-1939(4)	Milton T. Murray	Res.	John McBride	Jan. 1941
Milwaukee Co., 12th	2-21-1947	4-22-1947	Peter P. Pyszczyński	Dec.	William P. Banach	Jan. 1949
3rd Sen.	2- 4-1949	4- 5-1949(4)	Clement J. Zablocki	Res.	Casimir Kendziorowski	Jan. 1951
7th Sen.	2- 4-1949	4- 5-1949(4)	Anthony P. Gawronski	Res.	Roman R. Blenski	Jan. 1951
29th Sen.	2- 4-1949	4- 5-1949(4)	Charles D. Madsen	Res.	John F. Olson	Jan. 1951
Dunn Co.	2- 2-1951	4- 3-1951(4)	Earl W. Hanson	Dec.	G. H. Bakke	Jan. 1953
32nd Sen.	2-11-1953	4- 7-1953(4)	Rudolph M. Schlabach	Res.	Raymond C. Bice	Jan. 1957
12th Sen.	8-24-1954	11- 2-1954(5)	Paul J. Rogan	Res.	Bernard J. Gehrmann	Jan. 1957
10th Sen.	1-26-1955	4- 5-1955(4)	Warren P. Knowles	Res.	Robert P. Knowles	Jan. 1957
16th Sen.	1-27-1959	4- 7-1959(4)	Gaylord A. Nelson	Res.	Carl W. Thompson	Jan. 1961
Dane Co., 4th	2- 2-1959	4- 7-1959(4)	Carl W. Thompson	Res.	Jerome L. Blaska	Jan. 1961
Rock Co., 2nd	1-22-1963	4- 2-1963(4)	David J. Blanchard	Dec.	Carolyn J. Blanchard	Jan. 1965

SYMBOLS: Dec. - Deceased Res. - Resigned.

(1) Information from files of Wis. Secretary of State, Blue Books and legislative journals.

(2) All districts containing names of counties are Assembly districts.

(3) This is the date Hon. Joseph M. Morrow took the oath of office as a member of the Assembly. The date of election is not available.

(4) Regular spring election.

(5) Regular general election.

(6) The first date for which dates of Governors' proclamations are readily available.

Some idea of the difficulty which arises because of the necessary time lag in calling special elections can be gleaned from examining further those Senate resignations.

Senator Brennan resigned on April 29, 1961, and his term was to end in January 1963. Several months of legislative meetings lay ahead. The fact that a substantial portion of the session remained could have reasonably been anticipated but filling this vacancy in a timely manner would have required the expense of a specially held election. The special election in the district could have been held at the time of the spring election in 1962 for Milwaukee county judges, but by then, on the basis of past precedent, one could no longer anticipate that a significant portion of the session would occur beyond the time of the election.

Senators Lauri and Moser resigned on December 22, 1961, and February 1, 1962, respectively. It would have been difficult to anticipate that, if special elections were called, the Legislature would still be in session when successors were elected and qualified.

Senator Wilkie resigned in the latter part of May 1962, and, had a special election been called, the process would not have been completed in time for his successor to have participated in any part of the 1961 Session except the one-day meeting on December 28, 1962, and the brief convention on January 9, 1963, one hour before the 1961 Legislature's term expired.

Elections were held at the time of the general election in November 1962, to fill the vacancies left by Senators Moser and Wilkie, as their terms of office were not to expire until January 1965. Martin J. Schreiber and Assemblyman Fred A. Risser, respectively, were elected to fill the vacancies and could have taken office immediately. However, both waited until the convening of the 1963 Legislature to take the oath of office. They did not participate as Senators in the 1961 Legislature's meetings on December 28, 1962 and January 9, 1963. Mr. Risser continued to serve as an Assemblyman for those meetings. Had he taken the oath as a Senator, a vacancy would have existed in his Assembly seat.

The files of the Secretary of State, in whose office all legislators' oaths since 1877 are recorded, show no instance in which a legislator who was elected to fill a vacancy filed an oath of office for a legislative biennium in which all regular or special sessions had ended. In 8 cases, specially elected legislators took the oath, and then entered office in the closing months of a legislative biennium, but each time a special session followed. No legislator, elected to fill a vacancy at the November general election, has taken office before the convening of the next Legislature in January of the following year.

OTHER METHODS USED TO FILL VACANCIES

Table II summarizes the various methods prescribed by state constitutions (shown in the Appendix) for the filling of legislative vacancies.

TABLE II. Constitutional Provisions for Filling Legislative Vacancies. (Summary of the Appendix)

<u>State</u>	<u>Special Election</u> <u>Called by</u>		<u>Appointment by</u>		<u>As Provided</u> <u>by Law</u>
	<u>Governor</u>	<u>Other</u>	<u>Governor</u>	<u>Other</u>	
Ala.	X			
Ariz.		X		
Ark.	X			
Alaska		X ¹		
Calif.	X			
Colo.				X
Conn.	No constitutional provision				
Del.	X	X ²		
Fla.		X		
Ga.	X			
Hawaii		X ¹		
Idaho	No constitutional provision				
Ill.	X			
Ind.	X			
Iowa	X			
Kans.				X ³
Ky.				X ³
La.	X			
Maine	X			
Md.		X ⁴		
Mass.	X ⁷			
Mich.	X			
Minn.	X			
Miss.	X			
Mo.	X			
Mont.		X ⁶		
Nebr.		X ⁶		X
Nev.		X ⁶		
N.H.	X			
N.J.	X	X ⁷		
N.Mex.		X ⁶		
N.Y.		X ⁸		X
N.C.		X ⁸		
N.Dak.	X			
Ohio				X ³
Okla.	X			
Oreg.	X	X ²		X
Pa.	X ²			X ³
R.I.	X ²			
S.C.	X ²			
S.Dak.		X		
Tenn.	X			
Texas	X			
Utah		X ¹		X
Vt.	X ⁷	X ¹		
Va.	X	X ⁷		
Wash.		X ⁶		
W.Va.				X
Wis.	X			
Wyo.				X

See top of following page for footnotes.

Footnotes to Table II

- ¹Unless or until otherwise provided by law.
- ²Presiding officer of house in which vacancy occurs.
- ³Shall provide for special elections only.
- ⁴From name submitted by state central committee of political party of former officeholder.
- ⁵Senate only.
- ⁶County commissioners' board of vacated district.
- ⁷Members of house in which vacancy occurs.
- ⁸Like footnote 4, but county executive committee.

The process of special elections, in most cases at the call of the Governor, is the most employed method. Wisconsin is one of 19 states using this system exclusively. Nine other states provide that special elections called by various persons shall be the only method used.

Twelve states provide for appointment to fill such vacancies. The Governor is the appointing officer in 8 states, often acting on the recommendations of others. In 3 of these states, the Legislature may enact other methods for selecting replacements.

Four western states employ generally similar procedures whereby the board of county commissioners of the county in which the vacated district lies appoints a successor. Two of these states require the appointee to be a member of the same political party as his predecessor. One requires the appointment to be from a list of names submitted by the state central committee of the political party to which the vacating member belonged. One state provides for appointment by the Governor in multicounty districts and another provides for such action if the various county boards cannot agree.

The Model State Constitution (6th edition) proposed by the National Municipal League provides that legislative vacancies "shall be filled as provided by law." Eleven states have similar provisions, though 3 of these states require the manner "provided by law" to be a special election.

CONCLUSION

It is unfortunate that Wisconsin has not yet had experience under the appointing process for U.S. Senate vacancies. Such experience, compared with the many occasions in which the special election process has applied, could facilitate a decision as to the best method for filling state legislative vacancies.

Three choices are available:

(1) The present method of filling legislative vacancies by special election may be retained.

(2) Some kind of appointing process may be instituted with an appointee serving the remainder of the vacated term. This would require a constitutional amendment.

(3) The 2 systems could be combined as has been done for U.S. Senate vacancies, with a successor appointed to serve only until a special election can be held. This would require a constitutional amendment.

(1) Special elections

The present method of filling vacancies by special election has strong support in Wisconsin because of its long use. It is also the most popular method throughout the United States.

Proponents argue that this method is the only system of filling vacancies whereby the wishes of the electorate determine the successor. They say that this system is the only one that is truly consistent with our form of government--with representatives selected by the people.

Opponents charge that it is really inconsistent with a republican form of government because it denies representation. In many cases a vacated seat is not filled during the remainder of the session in which it was vacated. Even in those cases where special elections are called, the lengthy and costly process consumes so many weeks--and even months--that effective representation is severely curtailed.

Opponents point out further that some vacancies occur so closely to an important part of a session that it is impossible for the vacancy to be filled by the election process in time for effective representation in that session.

The vacancy created by Senator Wilkie's resignation in May 1962, exemplifies this. He resigned barely 3 weeks before the commencement of the meeting dealing with reapportionment. If a special election had immediately been called upon the Senator's resignation, it is unlikely that a successor would have been elected and qualified before the most significant part of the 1962 summer session had passed.

The vacancies occurring so far in the 1963 Legislature also illustrate this point. Assembly Speaker David Blanchard died December 24, 1962, 2 weeks before the commencement of his new term. On January 22, 1963, Governor Reynolds called for a special election to fill the vacancy, to be held at the time of the spring election in April. Mrs. Carolyn Blanchard was elected on April 2, and entered into office on April 9, 1963. Thus the people of Rock County's 2nd Assembly District were without representation for 4 months, most of which time the Legislature was in session.

Two other deaths have occurred in the 1963 Assembly. Hugh A. Harper, Assemblyman from Grant County, died on August 8, 1963, and Christ M. Stauffer, Assemblyman from Green County, died on October 15, 1963. Their counties were unrepresented in the November session of the Legislature and in the December special session. By a December proclamation, the Governor called for special elections to be held at the time of the April election in 1964 to fill these vacancies.

Some special elections have been held within one month following the Governor's proclamation and several more have been held within 40 days, but in the last 25 years the tendency has been for longer periods to elapse.

(2) and (3) Appointments

Proponents of this process cite its successful use in several states as proof that it is an effective and efficient system. They add that appointment by the Governor until a successor can be elected is the present process for filling vacancies in Wisconsin's U.S. Senate seats and thus the method is not repugnant to our tradition, although it would require a constitutional amendment.

They argue that the changes in legislative sessions--longer sessions in terms of days convened, and the session stretching over much greater parts of the biennium--necessitate changes in the method of picking successors. Speed is now more important and this process can be almost instantaneous.

They point out that safeguards can be erected so the voters' will is not subverted. A successor may have to be a member of the same political party as his predecessor, if that is desired. Local groups may be given the power to name a list from which the Governor chooses a successor. This retains a measure of local control over the appointment. Some states give county boards this power; one grants it to county political committees.

Another favorable argument is that the appointment may be only for the period until a successor is elected, rather than for the unexpired term. This permits the voters to make their choice as soon as possible and still receive representation while the special election wheels grind.

Opponents say that the appointing process is the antithesis of elective representation and that no safeguards can alter the fact that ultimately one man or one group appoints the successor. They allege that there is no way to select the people's choice, save by an election. The people are better unrepresented, than by a political appointee.

Opponents say that an appointment which lasts only until a special election gives a great advantage to the appointee-incumbent, who usually enters the special election race. Lastly, they charge that appointments are unnecessary, that the special election process, properly utilized, is fast enough to swiftly restore a district to its rightful representation.

APPENDIX: State Constitutional Provisions Applying to Legislative Vacancies.

Model State Constitution (sixth edition) prepared by the National Municipal League.

(Article IV) Section 4.06. When a vacancy occurs in the legislature it shall be filled as provided by law.

Alabama

Amendment Article XCVII. "Whenever a vacancy occurs in either house of the legislature the governor shall issue a writ of election to fill such vacancy for the remainder of the term."

Alaska

(Article II) Section 4. "A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment."

Arizona

(Article V) Section 8. "When any office shall, from any cause, become vacant, and no mode shall be provided by the Constitution or by law for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment."

Arkansas

(Article V) Section 6. "The Governor shall issue writs of election to fill such vacancies as shall occur in either house of the General Assembly."

California

(Article IV) Section 12. "When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies."

Colorado

(Article V) Section 2. "...Any vacancy occurring in either House by death, resignation, or otherwise, shall be filled in the manner prescribed by law. The person appointed to fill the vacancy shall be a member of the same political party, if any, as the person whose termination of membership in the General Assembly created the vacancy."

Connecticut - No constitutional provision.

Delaware

(Article II) Section 6. "Whenever there shall be a vacancy in either House of the General Assembly, by reason of failure to elect, ineligibility, death, resignation or otherwise, a writ of election shall be issued by the presiding officer of the House in which the vacancy exists, or in case of necessity in such other manner as shall be provided by law; and the person thereupon chosen to fill such vacancy shall hold office for the residue of the term. And whenever there shall be such vacancy in either House, and the General Assembly is not in session, the Governor shall have power to issue a writ of election to fill such vacancy, which writ shall be executed

as a writ issued by the presiding officer of either House in case of vacancy, and the person thereupon chosen to fill such vacancy shall hold office for the residue of the term."

Florida

(Article IV) Section 7. "When any office, from any cause, shall become vacant, and no mode is provided by this Constitution or by the laws of the State for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission for the unexpired term."

(Article XVIII) Section 9. "A general election shall be held in each county in this State on the first Tuesday after the first Monday in November, A.D. 1898, and every two years thereafter, for all elective State and County officers, whose terms of office are about to expire or for any elective office that shall have become vacant."

Georgia

(Article V) Section 1. Paragraph XII. "The Governor shall issue writs of election to fill all vacancies that may happen in the Senate and the House of Representatives..."

Hawaii

(Article III) Section 6. "Any vacancy in the legislature shall be filled for the unexpired term in such manner as may be prescribed by law, or, if no provision be made by law, by appointment by the governor for the unexpired term."

Idaho - No constitutional provision.

Illinois

(Article IV) Section 2. "...When vacancies occur in either house, the Governor, or person exercising the powers of Governor, shall issue writs of election to fill such vacancies."

Indiana

(Article 5) Section 19. "He ~~the~~ governor shall issue writs of election to fill such vacancies as may have occurred in the General Assembly."

Iowa

(Article III) Section 12. "When vacancies occur in either house, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies."

Kansas

(Article II) Section 9. "All vacancies occurring in either house shall be filled in such manner as the legislature shall provide."

Kentucky

Section 152. "...No person shall ever be appointed a member of the General Assembly, but vacancies therein may be filled at a special election, in such manner as may be provided by law."

Louisiana

(Article III) Section 8. "...Should a vacancy occur in either house, the Governor shall order an election to fill such vacancy

for the remainder of the term."

Maine

(Article IV, Part First) Section 6. "Whenever the seat of a member /of the house of representatives/ shall be vacated by death, resignation, or otherwise the vacancy may be filled by a new election."

(Part Second) Section 4. "...All vacancies in the senate, arising from death, resignation, removal from the state, or like causes, shall be filled by an immediate election in the unrepresented county. The governor shall issue his proclamation therefor and therein fix the time of such election."

Maryland

(Article III) Section 13. "In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city for which he shall have been elected, of any person who shall have been chosen as a Delegate or Senator, or in case of a tie between two or more such qualified persons, the Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing by the State Central Committee of the political party with which the Delegate or Senator, so vacating, had been affiliated in the County or District from which he or she was elected, provided that the appointee shall be of the same political party as the person whose office is to be filled; and it shall be the duty of the Governor to make said appointment within fifteen days after the submission thereof to him. In the event there is no State Central Committee in the County or District from which said vacancy is to be filled, the Governor shall within fifteen days after the occurrence of such vacancy appoint a person who is otherwise properly qualified to hold the office of delegate or senator in such District or County. In every case when any person is so appointed by the governor, his appointment shall be deemed to be for the unexpired term of the person whose office has become vacant."

Massachusetts

(Articles of Amendment) Article XXIV. "Any vacancy in the Senate shall be filled by election by the people of the unrepresented district, upon the order of a majority of Senators elected."

Michigan

(Article V) Section 13. "The governor shall issue writs of election to fill vacancies in the senate or house of representatives ..."

Minnesota

(Article IV) Section 17. "The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature..."

Mississippi

(Article IV) Section 77. "The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature, and the persons thereupon chosen shall hold their seats for the unexpired term."

Missouri

(Article III) Section 14. "Writs of election to fill vacancies in either house of the general assembly shall be issued by the governor."

Montana

(Article V) Section 45. "When vacancies, caused by death, occur in either house of the legislative assembly, such vacancies shall be filled by appointment by the board of county commissioners of the county from which such vacancy occurs..."

Nebraska

(Article III) Section 23. "All offices created by this constitution shall become vacant by the death of the incumbent, by removal from the state, resignation, conviction of a felony, impeachment, or becoming of unsound mind. And the Legislature shall provide by general law for the filling of such vacancy, when no provision is made for that purpose in this Constitution."

Nevada

(Article IV) Section 12. "In case of the death or resignation of any member of the legislature, either senator or assemblyman, the county commissioners of the county from which such member was elected shall appoint a person of the same political party as the party which elected such senator or assemblyman to fill such vacancy; provided, that this section shall apply only in cases where no biennial election or any regular election at which county officers are to be elected takes place between the time of such death or resignation and the next succeeding session of the legislature."

New Hampshire

(Part Second) Article 16. "All intermediate vacancies, in the house of representatives may be filled up, from time to time, in the same manner as biennial elections are made."

Article 34. "...All vacancies in the senate arising by death, removal out of the state, or otherwise, except from failure to elect, shall be filled by a new election by the people of the district upon the requisition of the governor, as soon as may be after such vacancies shall happen."

New Jersey

(Article IV) Section IV, 1. "Any vacancy in the legislature occasioned by death, resignation or otherwise shall be filled by election for the unexpired term only, as may be provided by law. Each house shall direct a writ of election to fill any vacancy in its membership; but if the vacancy shall occur during a recess of the Legislature, the writ may be issued by the Governor, as may be provided by law."

New Mexico

(Article IV) Section 4. "...If a vacancy occurs in the office of Senator or member of the House of Representatives, for any reason, the County Commissioners of the county wherein the vacancy occurs shall fill such vacancy by appointment; provided, however, that if a vacancy occurs in a Legislative District composed of more than one (1) county, then the County Commissioners of each County in the Legislative District shall submit one (1) name to the Governor, who

shall appoint the representative to fill such vacancy from the list of names so submitted by the respective County Commissioners.

"Such legislative appointments as provided in this section shall be for a term ending on December 31, subsequent to the next succeeding general election."

New York

(Article XIII) Section 8. "The legislature shall provide for filling vacancies in office..."

North Carolina

(Article II) Section 13. "If a vacancy shall occur in the General Assembly by death, resignation or otherwise, the said vacancy shall be filled immediately by the Governor appointing the person recommended by the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election."

North Dakota

(Article II) Section 44. "The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislative assembly."

Ohio

(Article II) Section 11. "All vacancies which may happen in either House shall, for the unexpired term be filled by election, as shall be directed by law."

Oklahoma

(Article V) Section 20. "The Governor shall issue writs of election to fill such vacancies as may occur in the Legislature."

Oregon

(Article IV) Section 3. "...If a vacancy in the office of senator or representative from any county or district or subdistrict shall occur, such vacancy shall be filled as may be provided by law."

(Article V) Section 17. "He [the governor] shall issue writs of Election to fill such vacancies as may have occurred (sic) in the Legislative Assembly."

Pennsylvania

(Article II) Section 2. "...Whenever a vacancy shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term."

Rhode Island

(Amendment Article XI) Section 6. "...A vacancy in the senate or house of representatives shall be filled at a new election. The general assembly shall provide by general law for the holding of such elections at such times as to insure that each town and city shall be fully represented in the general assembly during the whole of every session thereof so far as is practicable. Every person elected in accordance with this section shall hold his office for

the remainder of the term or for the full term, as the case may be, of the office which he is elected to fill, and until his successor is elected and qualified."

South Carolina

(Article III) Section 25. "If any election district shall neglect to choose a member or members on the day of election, or if any person chosen a member of either house shall refuse to qualify and take his seat, or shall resign, die, depart the State, accept any disqualifying office or position, or become otherwise disqualified to hold his seat, a writ of election shall be issued by the President of the Senate or Speaker of the House of Representatives, as the case may be, for the purpose of filling the vacancy thereby occasioned for the remainder of the term for which the person so refusing to qualify, resigning, dying, departing the State, or becoming disqualified, was elected to serve, or the defaulting election district ought to have chosen a member or members."

South Dakota

(Article III) Section 10. "The governor shall make appointments to fill such vacancies as may occur in either house of the legislature."

Tennessee

(Article II) Section 15. "When vacancies happen in either house, the Governor for the time being shall issue writs of election to fill such vacancies."

Texas

(Article III) Section 13. "When vacancies occur in either house, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill such vacancies; and should the Governor fail to issue a writ of election to fill any such vacancy within 20 days after it occurs, the returning officer of the district in which such vacancy may have happened shall be authorized to order an election for that purpose."

Utah

(Article VI) Section 13. "Vacancies that may occur in either house of the legislature shall be filled in such manner as may be provided by law."

Vermont

(Chapter II) Section 13. "...the General Assembly shall have the power to regulate by law the mode of filling all vacancies in the House of Representatives which shall happen by death, resignation or otherwise."

Section 20. "The Governor, and in his absence the Lieutenant Governor, shall have power to commission all officers, and also to appoint officers, except where provision is, or shall be, otherwise made by law on this Frame of Government; and shall supply every vacancy in any office occasioned by death or otherwise, until the office can be filled in the manner directed by law or this Constitution."

Section 37. "...the General Assembly shall have power to regulate by law the mode of balloting for Senators, within the several

counties, and to prescribe the means and the manner, by which the result of the balloting shall be ascertained, and through which the Senators chosen shall be certified of their election, and for filling all vacancies in the Senate..."

Virginia

(Article IV) Section 47. "...Each house shall select its officers, settle its rules of procedure, and direct writs of election for supplying vacancies which may occur during the session of the General Assembly; but if vacancies occur during the recess, such writs may be issued by the Governor, under such regulations as may be prescribed by law..."

Washington

(Article II) Section 15. "Vacancies in the Legislature. Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs: Provided, That the person appointed to fill the vacancy must be from the same legislative district and the same political party as the legislator whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: Provided, That in case of a vacancy occurring in the office of joint senator or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated."

West Virginia

(Article IV) Section 7. "...Elections to fill vacancies shall be for the unexpired term. When vacancies occur prior to any general election, they shall be filled by appointments in such manner as may be prescribed herein, or by general law, which appointments shall expire at such time after the next general election as the person so elected to fill such vacancy shall be qualified."

Wisconsin

(Article IV) Section 14. "The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature."

Wyoming

(Article III) Section 4. "When vacancies shall occur in the membership of either House of the Legislature of the State of Wyoming through death, resignation or other cause, such vacancies shall be filled in such manner as may be prescribed by law..."

OUR LATEST PUBLICATIONS

LEGISLATIVE REFERENCE LIBRARY

Research Bulletin:

- RB-141 A Guide to the Wisconsin Blue Book, 1853 to 1962.
February 1963.

Informational Bulletins:

- IB-222 A Chronological Listing of Important Events in the History of Wisconsin Legislative and Congressional Apportionment, 1950 to December 31, 1962. January 1963.
IB-223 Wisconsin Vote for Governor 1954 to 1962, by County: Republican Plurality, Per Cent, and 5-Election Average. January 1963.
IB-224 Three Proposed Amendments to the Wisconsin Constitution to be Submitted to the April 1963 Election. March 1963.
IB-225 Full-Crew Laws in Wisconsin: Highlights of Their History. April 1963.
IB-226 Annual Versus Biennial Legislative Sessions. April 1963.
IB-227 Analysis of the Family Code: Establishment and Termination of Marriages in Wisconsin. May 1963.
IB-228 Mathematics of Apportionment Applied to the Wisconsin Assembly. May 1963.
IB-229 The Evolution of the Occupational Motor Vehicle Operator's License in Wisconsin. June 1963.
IB-230 The Parole of County Jail Prisoners Under the Wisconsin Huber Law. June 1963.

LEGISLATIVE REFERENCE BUREAU

Informational Bulletins:

- IB-63-1 Medical Care for the Aged in Wisconsin. October 1963.
IB-63-2 The School Aid Formula in Wisconsin: A Brief Review of its Development. October 1963.
IB-63-3 The 1963 Executive Vetoes in Wisconsin. October 1963.
IB-63-4 Occupational Licensing in Wisconsin. December 1963.

Research Bulletins:

- RB-63-1 The Special Session in the Wisconsin Legislature. December 1963.
RB-63-2 Filling Legislative Vacancies: The Wisconsin Experience. December 1963.